



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/749,713 | 12/31/2003 | Boguslaw Orlowski | WMO 3J8 | 8834 |

23581 7590 03/18/2005

KOLISCH HARTWELL, P.C.
520 S.W. YAMHILL STREET
SUITE 200
PORTLAND, OR 97204

EXAMINER

CHAMBERS, MICHAEL S

ART UNIT PAPER NUMBER

3711

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,713

Applicant(s)

ORLOWSKI ET AL. *UP*

Examiner

Mike Chambers

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/13/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1.5, and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Glinchikoff (1458335). Glinchikoff discloses

a handle defining a handgrip portion; and a basket portion attached to the handle, the basket portion including a plurality of spaced apart retaining members configured to yield sufficiently to allow the projectile to pass therebetween when the projectile is received during a catch, the retaining members having sufficient tension to retain the projectile after the catch; a support structure configured to support the projectile after the projectile passes between the retaining members, and further configured to inhibit passage of the projectile therethrough; and a primary aperture disposed at an end of the basket portion substantially opposite the handle, dimensioned to allow the projectile to pass therethrough during a throw (fig 1-3). In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 5 : Glinchikoff discloses a support member defining a plurality of apertures smaller than a projectile (fig 1). In as much structure set forth by the applicant

in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 7 : Glinchikoff discloses support members in a criss-cross pattern (fig 1). In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 8 : Glinchikoff discloses support members that would flex (fig 1, 1:83-87). In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claims 9 and 10 : Glinchikoff discloses a substantially solid backing member (fig 1). The backing member would naturally flex at some level. In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

Also,

Claims 1, 5, 7, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lerch (2025995). Lerch discloses

a handle defining a handgrip portion; and a basket portion attached to the handle, the basket portion including a plurality of spaced apart retaining members configured to yield sufficiently to allow the projectile to pass therebetween when the projectile is received during a catch, the retaining members having sufficient tension to retain the projectile after the catch; a support structure configured to support the projectile after the projectile passes between the retaining members, and further configured to inhibit passage of the projectile therethrough; and a primary aperture disposed at an end of the basket portion substantially opposite the handle, dimensioned

to allow the projectile to pass therethrough during a throw (fig 1,3). In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 5 : Lerch discloses a support member defining a plurality of apertures smaller than a projectile (fig 1). In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112). The cloth bag would have apertures between the threads of the cloth.

As to claim 7 : Lerch discloses support members in a criss-cross pattern (fig 1-3). In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 8 : Lerch discloses support members that would flex(fig 1-3). In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claims 9 and 10 : Lerch discloses a substantially solid backing member (fig 1-3). The backing member would naturally flex at some level. In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3711

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lerch.

The specification provides no unexpected results in using an aperture less than 2.6 inches. As to claim 6, a 2.6" ball could not pass through an aperture less than 2.6". It would have been obvious to one of ordinary skill in the art to have selected an appropriate aperture diameter based on cost and design considerations.

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerch. The specification provides no unexpected results in using a tennis ball. It would have been obvious, if not already to one of ordinary skill in the art to have selected an appropriate aperture diameter based on cost and design considerations.

Also,

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caplette. The specification provides no unexpected results in using an aperture less than 2.6 inches. As to claim 6, a 2.6" ball could not pass through an aperture less than 2.6". It would have been obvious to one of ordinary skill in the art to have selected an appropriate aperture diameter based on cost and design considerations.

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caplette. The specification provides no unexpected results in using a tennis ball. It would have been obvious, if not already to one of ordinary skill in the art to have selected an appropriate aperture diameter based on cost and design considerations.

Also,

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerch as applied to claim 1 and further in view of Andrews. Andrews discloses an elastic

shock cord (5:15-20). The type of material used as a retaining member is a matter of design choice. The specification provides no unexpected results in using an elastic shock cord. It would have been obvious to one of ordinary skill in the art to have selected any one of several equivalent materials based on cost and design considerations.

In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 3 : Andrews discloses substantially parallel retaining members (fig 1). The position of the retaining member is a matter of design choice. The specification provides no unexpected results in using a parallel retaining member. It would have been obvious to one of ordinary skill in the art to have selected any one of several equivalent layouts based on cost and design considerations.

As to claim 4 : The dimensions claimed are a matter of design choice. The specification provides no unexpected results in using the cited dimensions. It would have been obvious to one of ordinary skill in the art to have selected appropriate spaced retaining members in based on cost and design considerations.

Also,

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glinchikoff as applied to claim 1 and further in view of Andrews. Andrews discloses an elastic shock cord (5:15-20). The type of material used as a retaining member is a matter of design choice. The specification provides no unexpected results in using an elastic shock cord. It would have been obvious to one of ordinary skill in the art to have

Art Unit: 3711

selected any one of several equivalent materials based on cost and design considerations.

In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 3 : Andrews discloses substantially parallel retaining members (fig 1). The position of the retaining member is a matter of design choice. The specification provides no unexpected results in using a parallel retaining member. It would have been obvious to one of ordinary skill in the art to have selected any one of several equivalent layouts based on cost and design considerations.

As to claim 4 : The dimensions claimed are a matter of design choice. The specification provides no unexpected results in using the cited dimensions. It would have been obvious to one of ordinary skill in the art to have selected appropriate spaced retaining members in based on cost and design considerations.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 571-272-4407. The examiner can normally be reached on Mon-Fri 8:30-5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3711

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

4032142*3895800*4717155*4872688*2801875*2
025995*1458335*1184822*3503611*4045026*67
39990
March 15, 2005

Michael Chambers
Examiner
Art Unit 3711


GREGORY VIDOVICH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700